

1 LOUIS A. HIGHMAN, ESQ., State Bar No. 61703  
2 LAWRENCE BALL, ESQ., State Bar No. 60496  
3 HIGHMAN, HIGHMAN & BALL  
4 A Professional Law Association  
5 870 Market Street, Suite 467  
6 San Francisco, CA 94102  
7 Telephone: (415) 982-5563  
8 Facsimile: (415) 982-5202

9 Attorneys for Plaintiff Arthur Mielke

10 United States District Court  
11 Northern District of California  
12 San Francisco Division

13 ARTHUR MIELKE,

No. C 04-05502 TEH

14 Plaintiff,

15 DECLARATION OF ARTHUR  
16 MIELKE IN SUPPORT OF  
17 MOTION TO REMAND CASE  
18 TO SUPERIOR COURT

19 -v-

20 CONOCOPHILLIPS  
21 COMPANY, SENTINEL  
22 TRANSPORTATION LLC,  
23 ABE CASTRO, MARILYN  
24 SHAW, DAVE STANNARD,  
25 DOES I-XX,

26 DATE OF HEARING: 5-9-05  
27 TIME: 10 A.M.  
28 CTRM: 12  
JUDGE: HON. THELTON  
HENDERSON

29 Defendants.

30 \_\_\_\_\_/  
31 Arthur Mielke declares as follows:

32 1. Attached hereto as Exhibit 1 are true and correct  
33 copies of two Complaint[s] of Discrimination under the  
34 Provisions of the California Fair Employment and Housing Act  
35 which I signed on September 20, 2004, which were filed with

1 the California Department of Fair Employment and Housing on  
2 September 21, 2004, one against Sentinel Transportation LLC  
3 and one against ConocoPhillips Company, along with Notice of  
4 Case Closure notices (including right to sue) addressed to me  
5 from the Department of Fair Employment and Housing dated  
6 September 23, 2004 for each said complaint of discrimination,  
7 along with a proof of service pertaining thereto for each said  
8 complaint.

9       2. On or about August 12 or 13, 2004, I received  
10 correspondence dated August 9, 2004, from Alison C. Pauly,  
11 regional investigator for the U.S. Department of Labor,  
12 Occupational Safety and Health Administration, pertaining to  
13 that agency's investigation of an administrative complaint I  
14 had filed with it pertaining to whistleblower/safety issues as  
15 to ConocoPhillips Company and Sentinel Transportation LLC.  
16 The letter indicated the agency was providing me with "your  
17 file as provided by Sentinel Transportation." A true and  
18 correct copy of the August 9, 2004 cover letter is attached  
19 hereto as Exhibit 2.

20       3. Included with the "file" referred to in the August  
21 9, 2004 cover letter was a copy of a document entitled  
22 "Employee Selection and Hiring Worksheet" which had Dave  
23 Stannard's signature on it, and which was signed October 16,  
24 2003. Dave Stannard had been my immediate supervisor at the  
25 Richmond terminal. A true and correct copy of the "Employee  
26 Selection and Hiring Worksheet" document is attached hereto as  
27 Exhibit 3.

28

1           4.    On the "Employee Selection and Hiring Worksheet"  
2 (Exhibit 3), on a 10-point scale (1 equals poor and 10 equals  
3 outstanding), Stannard rated me as a "6" on "Disposition (Gets  
4 along with fellow workers)", a "7" on "Attitude", a "7" on  
5 "Productivity", a "7" on "Work Ethic", and gave me no rating  
6 at all on "Safety". Also, on this same October 16, 2003  
7 "Employee Selection and Hiring Worksheet", Stannard checked  
8 the "No" box on the "Hiring Recommendation" line.

9           5.    I did not know of the existence of this document  
10 ("Employee Selection and Hiring Worksheet") or any of the  
11 contents of it before I received a copy of it from Alison  
12 Pauly in August 2004. I did not know Dave Stannard had made  
13 any of the statements and representations about me which were  
14 contained in the "Employee Selection and Hiring Worksheet",  
15 prior to receiving a copy of the "Employee Selection and  
16 Hiring Worksheet" from Alison Pauly in August 2004.

17           I declare under penalty of perjury under the laws of the  
18 United States that the foregoing is true and correct, and that  
19 this declaration was executed on April 3, 2005, at San  
20 Francisco County, California, and that the statements  
21 contained herein are true of my own personal knowledge, and if  
22 called as a witness I could and would testify competently  
23 thereto.

24

25

/s/ Arthur Mielke

26

Arthur Mielke, Declarant

27

28